

system once a few stations swap and receive huge sums of money. The risk of grave consequences to the public broadcasting system from interband swaps are too great to permit a short-term gain for only a few.

S. Rep. No. 182, 100th Cong., 1st Sess., at 77.<sup>15/</sup>

Nevertheless, Public Television recognizes that there may be circumstances in which an exchange of ATV channels will benefit both the commercial and noncommercial licensees without impairing public television service generally. Such exchanges might improve the quality of service provided by both licensees and afford the public television licensee much needed funds. At this juncture, however, when an ATV system has not yet been selected and its propagation characteristics are still unknown, it is premature to adopt any policies governing channel swaps between commercial and noncommercial licensees. Once the Commission knows more about how the ATV system will operate and whether there are differences in the service areas of the different allotments, it will be in a better position to assess the costs and benefits of any policy allowing exchanges of commercial and non-commercial channels. Consequently, Public Television urges the Commission to defer a decision on this issue until it has sufficient data to make an educated policy determination.<sup>16/</sup>

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<sup>15/</sup> See Comments of the National Association of Public Television Stations in MM Docket No. 85-41, June 17, 1985.

<sup>16/</sup> Public Television concurs in the Commission's conclusion that P.L. 101-515, Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 102 Stat. 2136-37, Nov. 5, 1990, precludes the Commission from de-reserving a reserved VHF noncommercial channel. See Notice at n.55.

**D. Operating Public Television Stations and Vacant Reserved Channels That Are Needed to Provide a First Public Television Service Should Have First Priority in ATV Allocations**

The Commission solicits comments on how it should determine which television stations should be granted an additional ATV channel in the event that there are not enough ATV channels to assign to all existing broadcasters. It suggests three possibilities. The first would be to employ decisional criteria that would favor those licensees proposing service to the largest viewership or coverage area. The second proposal would favor those applicants that are first to apply coupled with a strict financial qualifications requirement. The third proposal is to employ a lottery to decide which of multiple mutually exclusive applicants should be awarded an ATV channel. See Notice at ¶ 24-26.

For the reasons discussed above,<sup>17/</sup> noncommercial stations should not be required to compete with commercial stations for ATV spectrum under any procedure. It would not be consistent with the federal policy of making public television service available to all citizens of the nation to leave to chance whether noncommercial stations receive ATV allocations in a lottery. Nor do noncommercial stations have the financial resources or the ability to marshall their limited resources

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<sup>17/</sup> See pages 12-14 supra.

quickly enough to compete on an equal footing with commercial stations under a "first-come, first-served" approach.

Rather, in the event that there are not enough ATV channels to be assigned to every eligible party, the Commission should award priority to noncommercial licensees and permittees and vacant noncommercial reserved channels needed to provide service to unserved areas. Such a priority is justified on several grounds. First, it is consistent with the policy of reserving channels for educational use. Congress has determined that there is a strong public interest in:

public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all citizens of the Nation. . . .

47 U.S.C. § 396(a)(5)(1988). See also pages 6-7 supra.

Second, the types of programming for which public television is well known -- its visually stunning nature, science, art, architecture, performing arts and travel programs, and documentaries such as the recent "Columbus and the Age of Exploration" series -- exemplify the kinds of programming that would be most enhanced by ATV technology.

Third, there are far fewer public television stations than commercial television stations. Of the 1,488 full power television stations operating across the country, 1,131 are

commercial and only 357 are noncommercial.<sup>18/</sup> And, despite the proliferation of new technologies and the meteoric growth of cable, the terrestrial broadcast service is the only medium that provides, or has any prospect of providing, public television programming which is available to all without charge and which strives for quality and diversity, free of the commercial imperative to maximize audience size.

Accordingly, it would not be in the public interest to jeopardize the future of any noncommercial station or permittee or any vacant reserved channel needed to provide a first public television service during the transition to ATV technology. A reduction in public television service is too high a price to pay even for the impressive technical improvements offered by ATV.

**II. The Commission Should Include In the Class of Entities Eligible For ATV Channels All Eligible Noncommercial Applicants For Reserved NTSC Channels That Are Paired With Reserved ATV Channels**

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Public television supports the Commission's objective of effecting a major technological improvement in the existing broadcast television service, and believes that limiting eligibility for ATV spectrum to existing broadcast licensees, permittees and pending applicants is, in general, a necessary and reasonable way of achieving that objective. See Notice at ¶¶ 5-8.

One change in the Commission's proposal is necessary, however, to ensure that these ATV eligibility requirements do not

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<sup>18/</sup> See Broadcasting, Dec. 16, 1991, at 68.

nullify the benefits to be obtained by assigning ATV channels to vacant reserved NTSC channels. In its Notice, the Commission proposes to include full-service television station licensees, permittees authorized as the date of the Notice, and parties who filed applications for construction permits prior to adoption of the Notice and who are ultimately awarded licenses in the class of entities eligible for ATV channels. The Commission should modify the ATV eligibility requirements so that noncommercial entities eligible under Section 73.621 of the Commission's rules are eligible to apply for a reserved channel -- either the NTSC channel or its paired ATV channel or both -- even if they do so after the adoption date of the Notice. Denying noncommercial applicants the opportunity to file for these channels would undermine the purpose of pairing ATV channels with vacant reserved allotments.<sup>19/</sup>

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<sup>19/</sup> For the same reason, noncommercial applicants should not be subject to any filing freeze imposed on applications for NTSC channels once the initial assignments of ATV channels have been completed, at least during the early years of the transition to ATV. See Notice at ¶ 36. Reserved NTSC and ATV channels should remain open to noncommercial applications during the early years of the transition so that public broadcasting service can continue to expand. While there may be a point at which NTSC applications become inappropriate, given the penetration of ATV receivers, it is premature for the Commission to set any cut-off date now when the conversion to ATV is ten to twenty years in the future.

### **III. Noncommercial Applicants Should Be Afforded Flexibility Under ATV Application Procedures**

#### **A. Imposition of a Three-Year Application Deadline on Noncommercial Applicants Cannot Be Reconciled With the Policy Underlying Noncommercial Reservations**

In order to expedite the delivery of ATV service to the public, the Commission proposes to limit the period of time during which existing broadcasters will have the right to apply for paired ATV channels. Specifically, the Commission proposes to give existing broadcasters three years from the date of adoption of the ATV allotment table to apply for an ATV channel. Notice at ¶ 11. The Commission reasons that three years is long enough to permit stations to arrange any necessary financing and plan their ATV facilities. Id.

While the concept of imposing a reasonable application deadline in order to minimize delays in bringing ATV service to the public makes some sense in a commercial television environment, it cannot be reconciled with the policy underlying noncommercial reservations. In adopting that policy, the Commission recognized that noncommercial stations would "require more time" to become operational than commercial stations,<sup>20/</sup> and set channels aside so that noncommercial entities could raise necessary capital and operating funds.

That policy proved to be well-founded; without it, there would be no public television system in the United States today.

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<sup>20/</sup> Sixth Report and Order on Television Assignments, 41 F.C.C. at 159.

The same policy should guide the Commission's formulation of ATV policies for public television. Public Television is enthusiastic about the opportunities presented by ATV and believes that public television has a unique contribution to make to the development and use of this new medium.<sup>21/</sup> Nevertheless, while public television's enthusiasm may be unbounded, its resources are not. As noted above, noncommercial stations typically rely on federal and state government appropriations and donations from foundations, corporations and viewers to fund their operations. Unlike their commercial counterparts, public television stations cannot simply "arrange any necessary financing"<sup>22/</sup> in order to comply with an application deadline established by the Commission. Despite the eagerness of the stations to launch ATV service, their funders may simply not be prepared to contribute or appropriate the necessary funds for ATV facilities or programming until ATV is a reality in the marketplace and its benefits are apparent.

Public Television is confident, however, that once ATV has gained broad acceptance, there will be sufficient public demand

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<sup>21/</sup> Public television is already playing a leadership role in the development of ATV. PBS conducted the first international satellite ATV telecast, and is working on plans to demonstrate ATV programming to the public through local public television stations. As a noncommercial organization with strong technical and engineering capability and no vested interest in any specific ATV technology, PBS is also playing an important, neutral role in the testing of ATV systems. PBS was recently selected by the FCC's ATV Advisory Committee to be responsible for conducting ATV field tests, a critical component of the testing process.

<sup>22/</sup> Notice at ¶ 11.

for public television's ATV service to assure that the funds are made available to enable public television stations to provide ATV service. That is the pattern that developed in connection with the introduction of color television and it should follow for ATV as well.<sup>23/</sup> Public television has unique programming and services to offer that will capitalize on ATV technology and the public will insist that they be made widely available.<sup>24/</sup>

Consequently, Public Television believes that the Commission should not set any date by which public television stations must apply for reserved ATV channels. Rather, they should only be required to operate in an ATV mode at such time as the Commission may require licensees to surrender their NTSC authorizations. That schedule will give public television licensees the flexibility to install ATV facilities when funding is available and will avoid burdening noncommercial stations with the potentially heavy costs of installing ATV systems before there is wide demand for ATV service or funding to pay for the new equipment.

Just as the Commission reserved television channels for noncommercial use in 1952 -- years before many noncommercial entities were in a position to apply for those channels -- the

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<sup>23/</sup> See note 11 supra.

<sup>24/</sup> Public television has already produced programs in HDTV format, including The Orchestra, The Metropolitan Opera's production of Semiramide, and Masterpiece Theater's production of The Ginger Man.



Commission should afford noncommercial applicants considerable latitude in applying for reserved ATV channels. The pressure to maintain programming comparable in technical quality to that provided by commercial stations, cable operators and other television services that are likely to utilize ATV technology will ensure that noncommercial stations implement ATV service as quickly as they can.

**B. The Commission Should Not Require A Financial Qualifications Showing By Noncommercial Applicants.**

The Commission proposes to require that all applicants for ATV channels demonstrate their financial qualifications to construct an ATV facility and operate it for three months. Notice at ¶ 23. The Commission suggests that such a showing would consist of the estimated cost of constructing and operating the facility for three months, together with proof that the applicant either has available assets or a firm financial commitment from a lender sufficient to cover those costs. Id. It reasons that such a requirement would minimize the possibility that an ATV channel may be assigned to a broadcaster who is incapable or unwilling to begin or complete construction of its ATV facility, thus delaying the availability of ATV service to the public.

Public Television concurs with the view expressed by the Broadcasters coalition that there is no need to impose a financial qualifications requirement on existing broadcasters. Existing broadcasters all have a track record of constructing and

operating facilities, and they have substantial incentives to launch ATV service. In the near-term, they will have to implement ATV service in order to provide television service comparable in technical quality to that provided by cable systems and other competitive delivery systems that are likely to utilize ATV technology. In the long-term, stations that fail to implement ATV may eventually be out of business, given the Commission's intention to require them to surrender their NTSC channels once ATV becomes the prevalent medium. See Notice at ¶ 35-41. Thus, there is no basis for questioning whether stations will implement ATV service.

Even if the Commission concludes that commercial applicants should be required to demonstrate their financial qualifications, that requirement should not be applied to noncommercial stations that apply for ATV channels. The Commission has historically taken a far more relaxed attitude toward financial qualifications requirements for noncommercial applicants than it has for commercial applicants in light of their fundamentally different sources of funds, and it should do so here as well. Since there is no profit to be made by obtaining a noncommercial construction permit or license, public television licensees will not file applications for ATV authorizations until they have lined up most, if not all, of the necessary funding and are in a position to construct the facilities. Accordingly, Public Television does not believe that it would be appropriate or necessary to impose a

financial qualifications requirement on noncommercial stations that apply for ATV channels.

**IV. The Commission Should Not Hamper Television Station Flexibility By Imposing a Simulcasting Requirement**

The Commission expresses concern in the Notice about protecting consumers' existing investment in television sets during the transition to ATV, so that consumers are not forced to purchase new television receivers prematurely in order to enjoy top quality broadcast television service. Notice at ¶ 45. It suggests that one way of avoiding this result would be to require stations to simulcast at least a minimum amount or percentage of their programming on both their NTSC and ATV channels. Id.

For the reasons discussed in the comments filed by the Broadcasters coalition, imposition of a simulcasting requirement at this time would be premature. In the short-term, all stations will have to provide NTSC service and, in the long-term, inexpensive set-top converters may well be available that will obviate the need for a simulcast requirement.

While the benefits of a simulcast requirement would be minimal, if not nonexistent, the adverse effects of such a requirement, particularly on public television, would be substantial. A simulcast requirement would have a chilling effect on the development of ATV service, stifling the potential of ATV to be used for innovative new kinds of programming for which it is uniquely suited. To be sure, there are many programs -- such as public television's science and nature programs --

that would be wonderful on conventional television but substantially enhanced by use of ATV technology. However, certain types of programs -- for example, a programming focusing on Albrecht Durer's remarkable paintings and etchings -- might be fabulous on ATV, which could capture their visual intricacy and depth, but ineffective on NTSC, which could not.


In addition to providing an enhanced image, ATV also offers the creative community a range of programming options that are not possible with an NTSC format. For example, ATV will reduce the need for close-ups and permit directors to shoot scenes against expansive backdrops -- something not possible with NTSC. A simulcast requirement would reduce public television's flexibility to exploit these creative opportunities and demonstrate to the public the advantages of ATV service. Such a requirement would also hamper public television's efforts to allocate its scarce resources in a way that optimizes its programming and its use of both NTSC and ATV technologies.

The ATV policies adopted by the Commission in this proceeding should be designed to foster maximum innovation and experimentation with the new technology and to speed the introduction of ATV service. A simulcast requirement would frustrate achievement of these objectives, particularly in the early years of ATV service. Public Television therefore urges the Commission not to adopt such a requirement at this time.

**CONCLUSION**

For the foregoing reasons, the Commission should establish allocations and regulatory policies for ATV that protect and foster the development of public television service.

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